

48A C.J.S. Judges § 275

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Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

C. Grounds for Disqualification

2. Interest and Relationship

a. Interest

(1) General Considerations

§ 275. Generally

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West's Key Number Digest

West's Key Number Digest, [Judges](#)  42

A judge is disqualified from acting in a cause where the judge has an interest in the subject matter of the suit.

Ordinarily, a person cannot be judge of the person's own cause,¹ and such principle has been so long and well recognized that it is regarded as a maxim of law.² As a general rule, sometimes by virtue of constitutional or statutory provisions, an interest in the subject matter of a suit will disqualify a judge from acting therein.³ The rule is subject to exceptions in cases of necessity⁴ as where a judge is required to participate in a decision, notwithstanding a personal interest, if there is no other judge available to hear and decide the case.⁵ The type of interest that requires recusal

cannot be defined with precision.⁶ The interest which will disqualify a judge from trying a case depends on the circumstances and relationships,⁷ and in various instances, a judge's interest has been held not to require a disqualification.⁸

Statutes disqualifying judges on the ground of interest are absolute,⁹ mandatory,¹⁰ and jurisdictional.¹¹ They will be liberally construed.¹² It is beyond the scope of legislative authority to confer on a party to a controversy or one interested therein, the power to act as judge in such cause.¹³

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Footnotes

- 1 U.S.—*In re Murchison*, 349 U.S. 133, 75 S. Ct. 623, 99 L. Ed. 942 (1955).

Tex.—*Wythe II Corp. v. Stone*, 342 S.W.3d 96 (Tex. App. Beaumont 2011), cert. denied, 132 S. Ct. 1150, 181 L. Ed. 2d 1020 (2012).
- 2 Fla.—*State v. Chillingworth*, 95 Fla. 699, 116 So. 633 (1928).

W. Va.—*Williams v. Brannen*, 116 W. Va. 1, 178 S.E. 67 (1935).
- 3 U.S.—*Sao Paulo State of Federative Republic of Brazil v. American Tobacco Co., Inc.*, 535 U.S. 229, 122 S. Ct. 1290, 152 L. Ed. 2d 346 (2002); *In re Murchison*, 349 U.S. 133, 75 S. Ct. 623, 99 L. Ed. 942 (1955).

N.Y.—*Maron v. Silver*, 14 N.Y.3d 230, 899 N.Y.S.2d 97, 925 N.E.2d 899 (2010).
- 4 U.S.—*U. S. v. Will*, 449 U.S. 200, 101 S. Ct. 471, 66 L. Ed. 2d 392 (1980).

Alaska—*Hudson v. Johnstone*, 660 P.2d 1180 (Alaska 1983).

Necessity obviating rule against disqualification, generally, see § 235.

A.L.R. Library
Construction and Application of Rule of Necessity in Judicial Actions, Providing that a Judge Is Not Disqualified to Try a Case Because of Personal Interest If Case Cannot Be Heard Otherwise, 27 A.L.R.6th 403.
- 5 U.S.—*U. S. v. Will*, 449 U.S. 200, 101 S. Ct. 471, 66 L. Ed. 2d 392 (1980).
- 6 Wis.—*State v. O'Neill*, 2003 WI App 73, 261 Wis. 2d 534, 663 N.W.2d 292 (Ct. App. 2002).
- 7 U.S.—*In re Murchison*, 349 U.S. 133, 75 S. Ct. 623, 99 L. Ed. 942 (1955); *U. S. ex rel. Perry v. Cuyler*, 584 F.2d 644 (3d Cir. 1978).

Del.—*Matushefske v. Herlihy*, 59 Del. 117, 214 A.2d 883 (1965).

As to nature and degree of interest, see §§ 277 to 279.

Relationship as ground for disqualification, see §§ 289 to 297.

- 8 U.S.—[Laird v. Tatum](#), 409 U.S. 824, 93 S. Ct. 7, 34 L. Ed. 2d 50 (1972), (per Mr. Justice Rehnquist, no motion to recuse).
- Pa.—[Smith v. York County](#), 37 Pa. Commw. 47, 388 A.2d 1149 (1978).
- 9 N.Y.—[Di Lodovico v. Dotson](#), 1 Misc. 2d 505, 151 N.Y.S.2d 469 (County Ct. 1956).
- 10 U.S.—[McBride v. Galaxy Carpet Mills, Inc.](#), 920 F. Supp. 1278 (N.D. Ga. 1995).
- 11 N.Y.—[Casterella v. Casterella](#), 65 A.D.2d 614, 409 N.Y.S.2d 548 (2d Dep't 1978).
- 12 Idaho—[Bentley v. Lucky Friday Extension Min. Co.](#), 70 Idaho 511, 223 P.2d 947 (1950).
- 13 Fla.—[State v. Thomas](#), 99 Fla. 562, 126 So. 747 (1930).

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